

Assembly Bill No. 413

CHAPTER 513

An act to amend Section 999 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 6, 2015. Filed with
Secretary of State October 6, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 413, Chávez. California Disabled Veteran Business Enterprise Program.

The California Disabled Veteran Business Enterprise Program addresses the special needs of disabled veterans by assisting state procurement authorities in meeting or exceeding the disabled veteran enterprise participation goal of 3% for procurement contracts. Existing law, under the program, authorizes a child or spouse to continue to operate a disabled veteran business enterprise for 3 years after the death or the certification of a permanent medical disability of a disabled veteran who was the majority owner of that enterprise, but only for purposes of any contract entered into before his or her death or certification of disability.

This bill would delete the provision that only allows a child or spouse to operate the business for purposes of the contracts entered into before death or certification of disability. The bill would clarify the scope and purpose of the provision authorizing a child or spouse to continue to operate a disabled veteran business enterprise for 3 years after the death or the certification of a permanent medical disability of a disabled veteran who was the majority owner of that enterprise. The bill would also set forth a statement of legislative intent.

The people of the State of California do enact as follows:

SECTION 1. (a) It is the intent of the Legislature that the certification created by this act not conflict with the intended purpose of the California Disabled Veteran Business Enterprise Program, which is, as stated in subdivision (a) of Section 999 of the Military and Veterans Code, "to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service."

(b) The Legislature finds and declares all of the following:

(1) Allowing a person who is not a "disabled veteran," as defined in paragraph (6) of subdivision (b) of Section 999 of the Military and Veterans Code, to perform the role of a "disabled veteran" within the California

Disabled Veteran Business Enterprise Program, would conflict with the intended purpose of the program by placing that person in competition with a “disabled veteran” for program benefits intended to meet the special needs of disabled veterans.

(2) The spouse or child of a disabled veteran may participate in the program without conflicting with the program’s intended purpose, if their participation is limited to either fulfilling existing contracts or providing for the orderly and equitable disposition of a certified disabled veteran business enterprise following the death or permanent medical disability of the business’ majority owner.

(3) Three years is sufficient time for the orderly and equitable disposition of a certified disabled veteran business enterprise following the death or permanent medical disability of the majority owner.

(c) It is the intent of the Legislature that the certification created by this act shall not establish any business advantage other than to permit the spouse or child of the majority owner of a disabled veteran business enterprise to temporarily control and fully operate that business upon the death or permanent medical disability of the majority owner.

SEC. 2. Section 999 of the Military and Veterans Code is amended to read:

999. (a) This article shall be known as, and may be cited as, the California Disabled Veteran Business Enterprise Program. The California Disabled Veteran Business Enterprise Program is established to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. It is the intent of the Legislature that every state procurement authority honor California’s disabled veterans by taking all practical actions necessary to meet or exceed the disabled veteran business enterprise participation goal of a minimum of 3 percent of total contract value.

(b) As used in this article, the following definitions apply:

(1) “Administering agency” means the Treasurer, in the case of contracts for professional bond services, and the Department of General Services’ Office of Small Business and Disabled Veteran Business Enterprise Services, in the case of contracts governed by Section 999.2.

(2) “Awarding department” means a state agency, department, governmental entity, or other officer or entity empowered by law to issue bonds or enter into contracts on behalf of the state.

(3) “Bonds” means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by, or on behalf of, the state.

(4) “Contract” includes any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. “Contract” also includes any agreement or joint development agreement to provide labor, services, materials, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for, and on behalf of, the state.

(5) (A) “Contractor” means a person or persons, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age, or any sole proprietorship, firm, partnership, joint venture, corporation, or combination thereof that submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the state. “Contractor” includes a provider of professional bond services who enters into a contract with an awarding department.

(B) “Disabled veteran business enterprise contractor, subcontractor, or supplier” means a person or entity that has been certified by the administering agency pursuant to this article and that performs a commercially useful function, as defined in clause (i), in providing services or goods that contribute to the fulfillment of the contract requirements:

(i) A person or an entity is deemed to perform a “commercially useful function” if a person or entity does all of the following:

(I) Is responsible for the execution of a distinct element of the work of the contract.

(II) Carries out the obligation by actually performing, managing, or supervising the work involved.

(III) Performs work that is normal for its business services and functions.

(IV) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.

(V) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(ii) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor’s, subcontractor’s, or supplier’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation.

(6) “Disabled veteran” means a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, “Old Scouts,” and the Special Philippine Scouts, “New Scouts,” who has at least a 10-percent service-connected disability and who is domiciled in the state.

(7) (A) “Disabled veteran business enterprise” means a business certified by the administering agency as meeting all of the following requirements:

(i) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is unconditionally owned by one or more disabled veterans; a subsidiary that is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture’s management, control, and earnings are held by one or more disabled veterans.

(ii) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.

(iii) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(B) Notwithstanding subparagraph (A), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of the majority owner, or by both of those persons. A business is a disabled veteran business enterprise pursuant to this subparagraph under either of the following circumstances:

(i) For the duration of any contract entered into prior to the death or certification of permanent medical disability for the sole purpose of fulfilling the requirements of that contract.

(ii) After the date of the majority owner's death or certification of permanent medical disability established by this subparagraph for the sole purpose of providing sufficient time to make orderly and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a disabled veteran business enterprise for purposes of the program if the contract would not be completed within the three-year period.

(8) "Foreign corporation," "foreign firm," or "foreign-based business" means a business entity that is incorporated or has its principal headquarters located outside the United States of America.

(9) "Goal" means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

(10) "Management and control" means effective and demonstrable management of the business entity.

(11) "Professional bond services" include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.